DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
Implementation of the Pay Telephone Reclassifications and Compensation Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-128**

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION ON PETITION FOR PARTIAL RECONSIDERATION

The Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby offers the following comments in support of the Petition For Partial Reconsideration ("Petition") filed by International Telecard Association ("ITA") in the captioned proceeding. In its Petition, ITA seeks reconsideration of the grant by the Common Carrier Bureau ("Bureau") of a six-month waiver of the requirement that payphone service providers ("PSPs") transmit payphone-specific coding

[1] A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. The overwhelming majority of TRA's resale carrier members provide interexchange telecommunications services, and hence, are required to compensate payphone service providers (either directly or through their underlying network service providers) for payphone-originated toll free and access code calls.

No. of Copies rec'd 0+4
List A B C D E

digits in order to be entitled to receive per-call compensation for payphone-originated toll free and access code calls.[2] Specifically, ITA urges the Commission to relieve pre-paid calling card providers of the obligation to compensate PSPs for originating access code calls until such time as pre-paid calling card providers are provided the data necessary to allow for the "real-time" recovery of that compensation from their card users.

TRA agrees with ITA that pre-paid calling card service providers will be irreparably injured if required to compensate PSPs for originating access code calls absent the ability to track and/or block payphone-originated access code calls in "real-time." ITA is correct that without such ability, pre-paid calling card service providers will be compelled to incur significant costs without any realistic opportunity to recover these costs from card users. Accordingly, TRA joins ITA in urging the Commission to deny per-call compensation for originating access code calls to PSPs which do not provide payphone-specific coding digits on a "real-time" basis.

TRA has consistently urged the Commission to predicate a PSP's entitlement to per-call compensation for originating toll free and access code calls on the PSP's delivery to interexchange carriers ("IXCs") of the data necessary to identify (and bill for) and/or block such calls. TRA has repeatedly emphasized that absent such action, the small to mid-sized resale IXCs which comprise the "rank and file" of TRA's membership will be severely and irreparably harmed.[3]

---

[2] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Order), CC Docket No 96-128, FCC 97 2162 (Oct. 7, 1996) (*Coding Digit Waiver Order*).

[3] The average TRA resale carrier member has been in business for five years, serves 10,000 customers, generates annual revenues of $10 million and employs in the neighborhood of 50 people. The average customer of a TRA resale carrier member is a commercial account generating $100 to $1,000 of usage a month. Source: TRA's "1997 Reseller Membership Survey & Statistics" (Sept. 1997).

As TRA has explained, the impact of per-call payphone compensation obligations on small to mid-sized carriers, absent the ability to selectively block payphone-originated calls, tends to be magnified because of their smaller size and relatively limited financial resources, as well as the unique characteristics of their customer bases. And the public interest certainly would not be well served by undermining what constitutes the most vibrant and dynamic segment of the long distance industry.

ITA is correct, however, that the harm that will be visited upon the roughly 25 percent of TRA's members that provide pre-paid calling card services by requiring payment of per-call payphone compensation without benefit of "real-time" access to payphone-specific coding digits will be particularly devastating. Unlike other IXCs, pre-paid calling card service providers are not able to bill customers weeks after calls have been placed; a pre-paid calling card provider must debit charges during the course of a call or not at all. In order to do so, a pre-paid calling card provider must have "real-time" access to the data necessary to identify the call as a payphone-originated call. Monthly or quarterly statements are meaningless when cards can be depleted with a single call. Thus, without "real-time" delivery of payphone-specific coding digits, pre-paid calling card providers will confront the "Hobson's Choice" of suffering either the adverse financial consequences of absorbing amounts paid to compensate PSPs for payphone-originated access code calls or the adverse competitive consequences of raising rates for all calls.

TRA further agrees with ITA that imposing per-call payphone compensation obligations on pre-paid calling card service providers, while at the same time denying them the "real-time" data necessary to at least identify payphone-originated calls, will jeopardize the viability of many of these small providers. The pre-paid calling card industry is populated with many small entrepreneurial ventures which operate, as most small businesses do, on relatively thin margins. Moreover, the prepaid calling card industry is intensely competitive, with price competition being a driving force. Pre-paid calling card service providers thus have neither the margins within which to absorb or the traffic volumes over which to spread substantial additional costs without suffering adverse financial or competitive consequences.

Absent the "real-time" availability of payphone-specific coding digits, the only alternative available to pre-paid calling card service providers will be to increase rates across the board. Unfortunately, the customer universe for pre-paid calling card services is also not well situated to absorb steep cost increases. As the Commission has recognized, pre-paid calling card services are often "[l]ow-cost services targeted to meet the needs of those with low incomes or non-permanent living arrangements."[4] Indeed, the core consumer population for debit cards are individuals occupying the lowest socio/economic strata -- people who either do not have phones or lack the credit to obtain traditional calling cards.

TRA submits that pre-paid calling card service providers should not be forced to absorb significant unknown liabilities which may threaten their financial viability, as well as their competitive viability, simply to fill the coffers of "mini-monopolists."[5] Certainly, the less fortunate

---

4 The Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network (Notice of Proposed Rulemaking), 10 FCC Rcd. 13003, ¶ 38 (1996).

5 As the Commission has acknowledged, "there are certain locations where, because of the size of the location or the caller's lack of time to identify potential substitute payphones, no 'off-premises' payphone serves as an adequate substitute for an 'on-premises' payphone." Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), 11 FCC Rcd. 20541, ¶ 15, *recon.* 11 FCC Rcd. 21233(1996), *vacated in part sub nom.* Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555, 560, *clarified on rehearing* 123 F.3d 693 (D.C.

[footnote continued on next page]

consumers that comprise much of the customer universe for pre-paid calling card services should not have to suffer for this reason.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant the International Telecard Association's Petition for Partial Reconsideration and in so doing, to relieve pre-paid calling card service providers of the obligation to compensate on a per-call basis for originating access code calls any payphone service provider which does not provide payphone-specific coding digits on a "real-time" basis.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: Eric L. McFadden
Charles C. Hunter
Eric L. McFadden
HUNTER COMMUNICATIONS LAW GROUP
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

January 15, 1998

Its Attorneys

[footnote continued from preceding page]

Cir. 1997). TRA submits that for transient callers, this is unfortunately more often the rule than the exception. Contrary to the Commission's stated belief, most payphones will thus not "face a sufficient level of competition from payphones at nearby locations to ensure that prices are at a competitive level." *Id.* And even where alternatives are reasonably proximate, TRA submits that it is simply not realistic to assume that a consumer, having located a payphone in an airport, or in a parking garage, or in a restaurant or on the street, will elect not to use that phone because there *might* be another payphone elsewhere that *might* be less expensive.

CERTIFICATE OF SERVICE

I, Marie E. Kelley, hereby certify that copies of the foregoing document were mailed this 15th day of January, 1998, by United States First Class mail, postage prepaid, to the individuals on the attached service list.

Marie E. Kelley

Marie E. Kelley

Robert W. Spangler*
Federal Communications Commission
Chief, Enforcement Division
Common Carrier Bureau
2025 M Street, N.W.
Stop 1600A, Room 6008
Washington, D.C. 20554

Glenn B. Manishin
Michael D. Specht, Senior Engineer
Blumenfeld & Choen - Technonogy Law
Group
1615 M Street, N.W.
Suite 700
Washington, D.C. 20036

International Transcription Services, Inc.*
1231 Twentieth Street, N.W.
Washington, D.C. 20036

* **Via Hand Delivery**